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MEMORANDUM TO: Jeffrey May
Acting Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
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for Import Administration, Group II

SUBJECT: Issues and Decision Memorandum for the 2001 Administrative Review
of the Antidumping Order on Potassium Permanganate from the
People's Republic of China: Final Results

Summary

We have analyzed the comments and rebuttal comments of interested parties in the antidumping duty administrative review of potassium permanganate from the People's Republic of China (PRC). As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for these final results.

As noted below, the Department of Commerce (the Department) has determined to base the dumping margin for the respondent in the above-referenced review on total adverse facts available (AFA). Therefore, the Department has not addressed the comments raised by the parties that do not pertain to the Department's total AFA decision.

Below is the complete list of issues in this administrative review for which we received comments and rebuttal comments from parties. Only Comment 1 pertains to the Department's total AFA decision.

- Comment 1: Whether the Department Should Base Groupstars Jinan's Dumping Margin on Total Adverse Facts Available
- Comment 2: Whether the Department Should "Collapse" Groupstars and JCC
- Comment 3: Surrogate Value for Manganese Dioxide
- Comment 4: Surrogate Value for Potassium Hydroxide
- Comment 5: Surrogate Value for Slaked Lime/Lime/Limestone
- Comment 6: Surrogate Value for Electricity and Water

- Comment 7: Surrogate Value for Coal
- Comment 8: Surrogate Value for Salt
- Comment 9: Surrogate Value for Silicon Dioxide
- Comment 10: Selection of Surrogate Financial Ratios
- Comment 11: Allegations of Ministerial Errors Related to the Calculation of Packing Materials
- Comment 12: Allegations of Ministerial Errors Related to the Calculation of Distance to the Port
- Comment 13: Whether the Department Should Have Included in its Calculations Additional Indirect Selling and Movement Expenses

Background

This review covers potassium permanganate exported to the United States by Groupstars Chemical Co., Ltd. (Groupstars Jinan) and sold by Groupstars' U.S. affiliate, Groupstars Chemical LLC (Groupstars LLC). Groupstars Jinan and Groupstars LLC are owned by the U.S. company Groupstars Holding Inc. (Groupstars Holding). The period of review (POR) is January 1, 2001 through December 31, 2001. The facility that produced the subject merchandise was operated by two different entities during the POR. Yunnan Jianshui County Chemical Industry Factory (JCC), the entity that operated the facility at the start of the POR, transferred the facility to Yunnan Groupstars Chemical Company Ltd. (the Joint Venture) during the POR. The Joint Venture is owned by Groupstars LLC and JCC. We will refer to all companies in which Groupstars Holding has a direct or indirect interest as "Groupstars" collectively. Because both JCC and the Joint Venture produced during the POR, the Department considered factors of production (FOP) data from both entities.

The Department conducted a verification of Groupstars in December 2002, and January 2003. At verification, the Department noted certain discrepancies in, and omissions from, the information reported by Groupstars, and the Department applied partial facts available in the preliminary results.¹ The Department issued its preliminary results of review on January 31, 2003. See Notice of Preliminary Results in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China, 68 FR 7768 (February 18, 2003).

Subsequent to verification, the petitioner, Carus Chemical Company (Carus), argued that the records presented to the Department to support the accuracy of Groupstars' response are not reliable. Carus supported its argument with factual information previously not on the record. This information includes accounting records for the producer, JCC, and technical information, which purportedly demonstrates that the reported material consumption quantities and claimed yields could not be achieved using

¹ See memorandum to the file from John Conniff, Import Compliance Specialist, Drew Jackson, Import Compliance Specialist, and Heidi Schriefer, Senior Accountant, concerning PRC Verification of Groupstars Chemical Co. Ltd.'s responses in the 2001 Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China dated January 31, 2003 (PRC Verification Report), Summary of Findings at 37-38; see also Notice of Preliminary Results in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China, 68 FR 7768 (February 18, 2003).

Groupstars' reported production process.² Considering that the arguments in Carus' submissions relate to the reliability of certain reported information and information obtained at verification, the Department found that it was appropriate to have on the record the source documents that support Carus' argument. Therefore, the Department accepted this new factual information and provided the respondent the opportunity to rebut this information with other factual information. See memorandum from John Conniff, Import Compliance Specialist, to the file concerning Submission of technical information by Carus Chemical Company, dated April 16, 2003,³ and memorandum from John Conniff, Import Compliance Specialist, to Thomas F. Futtner, Acting Office Director, concerning Submission of Untimely Filed Factual Information by the Petitioner and the Respondent, dated July 30, 2003.

In response to the Department's invitation to submit comments regarding the preliminary results, Carus and Groupstars each submitted a case brief on May 7, 2003. Both parties submitted rebuttal briefs on May 12, 2003. A hearing was held on July 24, 2003.

Discussion of the Issues

Comment 1: Whether the Department Should Base Groupstars Jinan's Dumping Margin on Total Adverse Facts Available

Carus argues that the Department should base Groupstars Jinan's dumping margin on total AFA because the underlying production and accounting records of Groupstars and its affiliates are wholly unreliable.⁴ As described in detail below, Carus bases its argument on its analysis of the accounting records obtained at verification and technical information regarding the production of potassium permanganate. Carus contends that, notwithstanding the Department's verification, (which, Carus claims, did not, and typically does not, address the integrity of the respondent's underlying records because it is not a full-scale audit of the respondent's complete accounting system) an additional analysis of Groupstars' accounting records is required because Groupstars admitted that it provided false records during the verification in the prior review. Moreover, Carus claims that in the instant review, Groupstars has followed a consistent pattern of supplying false information and attempting to mislead the Department with respect to the completeness of U.S. sales, U.S. price adjustments, and factor usage. Carus' argument regarding the use of total AFA and Groupstars' rebuttal argument are

² See Carus' January 23, 2003 submission; see also Carus' April 9, 2003 submission (Technical Report) cited in Carus Case Brief.

³ The memorandum addresses Carus' April 9, 2003 submission regarding Groupstars' consumption quantities and production yields. In the memorandum, the Department determined it was appropriate to ask for, and accept, the new factual information at issue in order to clarify Carus' argument. The Department provided Groupstars an opportunity to respond to Carus' allegations, which it did on April 30, 2003.

⁴ See *Gourmet Equipment Corp. v. United States*, No. 99-05-0062. 2000 Ct. Int'l Trade LEXIS (July 6, 2000) (*Gourmet Equipment*); *Bomont Industries v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990); *Monsanto Company v. United States*, 698 F. Supp. 275, 281 (CIT 1988).

set forth below.

A. U.S. Sales Completeness

Carus claims that Groupstars could not demonstrate that it reported complete U.S. sales information because 1) its U.S. accounting records are significantly flawed, and 2) it failed to disclose certain affiliated U.S. companies. According to Carus, the following flaws in Groupstars LLC's accounting records indicate a wholesale lack of the most basic accounting controls for sales and purchases: 1) lack of accounting controls for tracking accounts receivables by customer; 2) a failure to keep copies of incoming checks; 3) use of off-book sales invoices without a unified invoice numbering system; 4) accounting entries which make it impossible to reconcile individual sales transactions to the company's accounts; 5) lack of accounting controls over expenses (e.g., no indication on checking records as to the nature of certain expenses,⁵ mixing of personal and business expenses, posting expenses to the wrong accounts, use of lump-sum entries which hide transaction details including details regarding Groupstars LLC's purchases of potassium permanganate), posting transactions of one company in the accounts of another affiliated company; and 6) lack of inventory controls as demonstrated by discrepancies between sales and inventory records.

With respect to the undisclosed companies discovered at verification,⁶ Carus maintains that the Department was required to examine the books and records of these affiliated companies in order to confirm U.S. sales completeness. However, Carus notes that the Department was never provided with any (or at least complete) records, for a number of these undisclosed companies, even though there are indications that some of these companies were active. Moreover, Carus notes that Groupstars failed to provide accounting records for Groupstars Holding, which, despite Groupstars' claim that the holding company had no business activity, is listed as active during 2001 in Dunn and Bradstreet reports. Carus argues that Groupstars Holding, by the terms of its articles of incorporation, should have had financial records available for the Department's inspection. See Carus Case Brief at 60. Given that there is evidence of commingling of expenses of two companies in which Mr. Ji held direct or indirect interests (i.e., Groupstars LLC and New Phoenix International Trade Corporation (New Phoenix)), Carus contends that the discovery of the unreported companies compromises the whole verification. Further, Carus argues that because the Department was unable to review records for all these unreported companies it cannot determine what was sold by these companies or what expenses they incurred.

⁵ Carus notes that there is an "unspecified" disbursement recorded in Groupstars LLC's sales account and contends that this disbursement must be considered an unreported sales rebate.

⁶ At verification, the Department obtained evidence identifying Mr. Ji as the incorporator of these companies.

Groupstars, however, argues that the U.S. Verification Report⁷ shows that the Department was able to verify sales completeness, finding only discrepancies related to Groupstars' reported inland freight and indirect selling expenses. Noting specific procedures described in the U.S. Verification Report, Groupstars argues that the report establishes the adequacy of Groupstars' records. Groupstars also contends that the Department was unable to find any evidence that the undisclosed companies were involved in sales of potassium permanganate.

B. Reliability of Groupstars' PRC records

Carus argues that Groupstars failed to demonstrate completeness of its sales⁸ because its sales and accounting records lack integrity and also reveal inconsistencies. Thus, Carus argues, the Department should resort to facts available. See, e.g., Usinas Siderurgicas De Minas Gerais, S.A. v. United States, No. 93-09-00557-AD, 1998 Ct. Int'l Trade LEXIS 107 (July 24, 1998) (noting that seriously flawed sales data and non-matching sales justify use of best information available); Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States, 178 F. Supp. 2d 1305,1325-6 (CIT 2001) (Fujian) (noting incomplete and imperfect sales information justifies use of facts available).

As a specific example of the lack of integrity in Groupstars' PRC records, Carus contends that Groupstars presented to the Department at verification invoices for export sales by JCC that are, most likely, fraudulent. Carus contends that the suspect JCC export sales invoices contain numerous apparent errors. In particular, one of the two types of JCC invoices presented by Groupstars: 1) lists no destinations or has the destinations written in Chinese; 2) has no integrity to the invoice numbering system; 3) lacks contract numbers or has repetitive contract numbers; 4) has apparent mistakes in the customer names; and, 5) lacks government chops, stamps or other markings.⁹ Carus also argues that the PRC Verification Report concludes that the listed destinations and monthly quantities of these suspect invoices do not reconcile to JCC's reported export sales. Carus argues that the numerous apparent errors in the JCC invoices taken at verification either mean that they are not actual company records or that JCC has no management or accounting controls. Moreover, Carus notes that there is no evidence on the record that shows that the Department examined standard, government mandated export documentation such as packing lists, bills of lading or shipping bills, and, therefore, the invoices are not supported by secondary records. In either case, Carus argues, the Department may not rely on these records, and therefore must apply AFA. See Antidumping Duty Administrative Review of

⁷See memorandum to the file from John Conniff, Import Compliance Specialist, Drew Jackson, Import Compliance Specialist, concerning U.S. Verification of Groupstars Chemical Co. Ltd.'s responses in the 2001 Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China, dated January 31, 2003 (U.S. Verification Report).

⁸Carus argues that Groupstars and JCC should be collapsed (see Comment 2) and the deficiencies in JCC's export sales invoices indicate that these invoices cannot be relied upon to verify sales completeness.

⁹See PRC Verification Report, Jianshui (JCC) Exhibit 29.

Certain Cased Pencils from the People's Republic of China, 66 FR 37638 (July 19, 2001) and accompanying Issues and Decision Memorandum at Comment 1 (wherein the Department applied total AFA because respondent did not provide complete sales records).

As further evidence of the unreliability of Groupstars' PRC sales and accounting records, Carus maintains that JCC made significant POR export sales of potassium permanganate that do not appear in the export sales documentation presented at verification. Carus notes that in its January 23, 2003 submission to the Department, it submitted documentation relating to its purchases of potassium permanganate from JCC for shipment to Mexico that are not reflected in the export sales documentation obtained at verification. Carus contends that the sales documents it submitted show that it purchased potassium permanganate directly from JCC, and that the subject merchandise went directly from the PRC to Mexico (i.e., no intervening parties or countries were involved in the transaction). Carus further argues that these invoices cannot be tied to export sales that have been reported to the Department, and that their existence suggests the possibility of a second set of undisclosed books.

Carus also argues that irregularities in tax records presented by Groupstars demonstrate that the Department was denied an opportunity to conduct a full audit of necessary books and records. Specifically, Carus argues that the verification exhibits reveal the existence of two separate VAT tax identification numbers and an undisclosed bank account for JCC. According to Carus, this suggests that JCC operated as two distinct business entities during the POR, and that the Department was denied the opportunity to audit the books of the second entity. Carus further argues that the VAT invoices for transfers from the Joint Venture to Groupstars Jinan reveal an undisclosed bank account for the Joint Venture that could have been used to hide sales from the Department.

Groupstars, however, argues that the PRC Verification Report shows that the Department was able to verify sales completeness. Noting specific procedures described in the PRC Verification Report, Groupstars argues that the report establishes the adequacy of Groupstars' records.

According to Groupstars, it provided complete export sales documentation to the Department at verification, and has therefore demonstrated sales completeness. Specifically, Groupstars argues that Department verifiers examined all of JCC's sales records and found no indication of unreported U.S. sales. Moreover, Groupstars contends that its officials could not have had the opportunity to forge a complete set of JCC export invoices in the short amount of time they were given to produce them at verification. Groupstars further argues that while JCC's monthly sales quantities and destinations do not reconcile with JCC's reported export sales, its records for the POR as a whole do reconcile.

Groupstars further claims that documents placed on the record by Carus regarding the potassium permanganate it purchased from JCC and shipped to Mexico during the POR do not indicate that Groupstars failed to demonstrate sales completeness. The sales at issue, Groupstars maintains, were made by an independent trader who bought potassium permanganate from JCC and sold it to Carus.

Groupstars contends that at the time of verification, JCC's sales staff only knew that one of the sales at issue was made to a U.S. company that arranged for the merchandise to be shipped to Mexico, and, therefore, they were only able to disclose the ultimate destination of this sale to the Department.

Additionally, Groupstars argues that the verification report does not establish that JCC operated as two distinct entities during the POR or that Groupstars intentionally withheld bank account information from the Department. Groupstars claims that only one JCC entity operated during the POR, and Carus' assertion that JCC operated as more than one entity with more than one name during the POR can be attributed to a mistaken translation of a Chinese language document. Additionally, Groupstars argues that the second bank account number identified on JCC's VAT documents can be explained by the fact that the bank changed JCC's bank account number when it changed its record keeping system. See Groupstars Reply Brief at 43. Groupstars did not comment on Carus' allegation that the Joint Venture maintained an additional, unreported bank account.

C. Reliability of Records Used to Support Factors of Production Data

Carus argues that Groupstars' reported consumption quantities cannot be correct, that any records that support these claimed consumption quantities must be inaccurate, and that the Department may not rely on these records to calculate a margin for Groupstars. Carus contends that the laws of chemistry and known facts of chemical engineering demonstrate that Groupstars significantly understated its consumption quantities for key inputs.

Carus argues that Groupstars has failed to effectively justify its claims of low input requirements. Carus argues that in claiming that its yields¹⁰ are not implausible so long as they do not exceed 100 percent Groupstars has made an implausible assertion that ignores real world forces and conditions that constrain chemical reactions. Carus contends that Groupstars' production process is far less technologically advanced than that of other potassium permanganate producers known to Carus, and therefore must have significantly lower actual yields than it has reported. Carus also notes that a 1998 Chinese article that compares the Chinese potassium permanganate production technology with other technologies around the world emphasizes the relative inefficiency of the Chinese process. See Carus Case Brief at 19.

Carus contends that Groupstars' claims of high efficiency and correspondingly high yields are not credible in light of scientific, technical, and real world constraints on efficiency. Carus claims that chemical side reactions, the inability to effectively control temperature, production equipment design, the ability to bring materials close together and the existence of multiple steps in the production process all influence efficiency. Carus argues that an analysis of Groupstars' production process in light of the foregoing real world constraints disproves Groupstars' claims of high yields. In its analysis, Carus

¹⁰Factor yields are expressed as percentages of raw materials that undergo complete conversion to the finished product.

technical experts compared Groupstars' production process with those used by 12 other current and former producers of potassium permanganate and determined that Groupstars is the least efficient, and therefore must require more inputs than it has reported.

Carus points to specific reasons why, in its estimation, Groupstars' production process is inefficient and must require more inputs than Groupstars has reported. Specifically, Carus cites technical reasons why Groupstars must have understated its consumption of manganese ore, potassium hydroxide, lime (or limestone),¹¹ coal, and electricity. Carus further argues that Groupstars' claim of low waste production is further evidence of the unreliability of its reported data. Carus argues that Groupstars has claimed to generate significantly less waste than either of the two Carus facilities, which is technically unfeasible given Groupstars' less advanced production process.

Carus argues that Groupstars' justification of its yields and its explanation of its input specifications, which were offered at verification, cast further doubt on the credibility of Groupstars' claims. Carus argues that Groupstars has not adequately explained the loss of the finished product that was indicated by the presence of purple liquid on the floor of its production facility. Carus has argued that the existence of a purple liquid, which contains finished potassium permanganate, on the production facility's floor is evidence that finished product leaks out of Groupstars' system. Carus also maintains that the ore that Groupstars reported using lacks a sufficient percentage of manganese dioxide to support Groupstars' ore usage claims, and that Groupstars' claim that other manganese compounds in the ore increase its effective manganese dioxide content are implausible. Additionally, Carus notes that Groupstars' claimed yields are based on full conversion of all of the other manganese compounds in the ore, however, Groupstars has only claimed that these other manganese compounds undergo partial conversion. Moreover, Carus contends that Groupstars' roasting temperatures are too low for these manganese compounds to undergo significant conversion. Carus also argues that Groupstars' relatively low roasting temperature is unlikely to result in the high yields claimed by Groupstars.

Carus further argues that the report by Carus' technical experts has not been successfully discredited by Groupstars. Specifically, Carus maintains that its most essential technical arguments have not been refuted by Groupstars, including the argument that other manganese compounds will not convert to manganese dioxide at the low temperatures that Groupstars uses in the roasting process. Carus also argues that Groupstars' response to the Technical Report impermissibly used ranged proprietary data from another PRC respondent, Zunyi Chemical Factory (Zunyi), in a prior review.¹² Carus claims that

¹¹Carus argues that it is unclear from the record what form of lime or limestone Groupstars actually uses in its production process. See *infra* Comment 5.

¹²The Department rejected Groupstars' submission because it contained business proprietary data of a party that was not subject to this review, and there was no evidence that this party consented to the release of this information. See Letter to from Howard Smith, Program Manager, to Counsel for Groupstars, 2001 Administrative Review of Potassium Permanganate from the People's Republic of China - Return of April 30, 2003 Submission (July 11, 2003).

Groupstars' contention that its reported consumption quantities are reasonable because they are similar to Zunyi's consumption quantities is not plausible because the Zunyi production process is more efficient than that of Groupstars.

Groupstars argues that no technical claim raised by Carus prior to verification has merit, and that any claim raised after verification need not be addressed. Nonetheless, Groupstars argues that Carus' Technical Report includes information regarding a production process similar to Groupstars' process which establishes that the claimed yields are reasonable. Groupstars also argues that Carus' Technical Report provides no more than unverified estimates of Groupstars' actual yields, and may not be substituted for yields supported by verified FOP data. Moreover, Groupstars argues that ranged FOP data from the Department's review of Zunyi, which it permissibly placed on the record of this review, supports its claim that the reported yields are reasonable. Groupstars also argues that its claimed yields are not unreasonable for the chemical industry.

Carus asks the Department to have experts with the requisite technical training review the technical issues it has raised in this review. Specifically, Carus requests that the Department have these issues reviewed and analyzed by a chemical engineer with appropriate real world knowledge of chemical production processes.

Carus argues that Groupstars has not successfully rebutted Carus' claims that Groupstars' factor data are incorrect because the factor data are based on yields that Groupstars cannot achieve. Additionally, Carus claims that its Technical Report shows that Groupstars' defense of its yields cannot be correct. See Carus' Brief at 26-29. Moreover, Carus argues that Groupstars itself has refuted its central claim that other manganese compounds in the ore it uses undergo conversion to finished product by noting that these other manganese compounds do not participate fully in reactions during production. Additionally, Carus notes that Groupstars itself has stated that potassium permanganate cannot be produced from ore that does not contain manganese dioxide.

Groupstars, on the other hand, argues that the Department's verification report established the accuracy of its FOP data. According to Groupstars, the Department conducted a thorough verification and found no evidence that Groupstars' FOPs were understated. Additionally, Groupstars contends that it has no incentive to understate FOPs to achieve a low margin because the price of potassium permanganate in the United States is high.

Moreover, Groupstars argues that it does not need to respond to each point raised in Carus' Technical Report. Groupstars contends that Carus could have submitted its technically-based assertion prior to the verification so that Groupstars officials could have had the opportunity to respond to allegations regarding its yields. Groupstars further argues that it would be unfair to allow an independent expert to review the technical data at a time in the proceeding when Groupstars would not be allowed to respond to any questions that may be raised. Additionally, Groupstars contends that no provision in the law requires it to submit highly technical arguments from independent chemical experts to justify its yields,

but rather it requires a respondent to make its books and records available for the Department's inspection, which it has done.

Groupstars refutes some specific allegations regarding its production process made by Carus. Specifically, Groupstars argues that its claimed yields do not violate laws of chemistry because its claimed yields are less than 100 percent, and only a yield greater than 100 percent violates the laws of chemistry. Additionally, Groupstars argues that high yields are not unusual in the chemical industry. Groupstars also contends that its open system and long processing times allow it to realize its claimed yields. With reference to its claimed yield for manganese dioxide, Groupstars reasserts its claim that manganese compounds other than manganese dioxide in the ore it uses undergo conversion to the finished product, effectively increasing its yield. Responding to Carus' allegation that Groupstars' oven temperature is too low for certain chemical reactions to take place, Groupstars argues that the conditions under which Department verifiers observed Groupstars' material reactant temperature readings caused a discrepancy between the actual reactant temperatures and those recorded in the PRC Verification Report. Addressing Carus' allegations regarding Groupstars' use of slaked lime (see footnote 11 above), Groupstars argues that the Department verifiers saw Groupstars' lime slaking equipment at verification.

D. Whether Groupstars Has Failed to Report All Selling Expenses

Carus argues that the Department must employ total AFA because Groupstars' U.S. records do not reflect significant additional expenses associated with adjustments to the U.S. price. In support of its argument, Carus claims that it is impossible to determine from Groupstars' U.S. records whether Groupstars has accurately reported all selling expenses incurred in the United States.

First, Carus argues that multiple problems exist regarding the expenses in the accounts of Groupstars LCC and New Phoenix, which make it impossible to determine whether Groupstars has reported all of its selling expenses. Specifically, Carus claims that many of Groupstars' and New Phoenix's expenses are not segregated, and show significant commingling of accounts.¹³ Carus points to instances of New Phoenix and Groupstars paying expenses related to the other's business activity. Carus also argues that expense records lack detail and show significant instances of payment of personal expenses. Further, Carus contends that neither Groupstars nor New Phoenix has reliable inventory control mechanisms in place. Finally, Carus argues that the records of New Phoenix and Groupstars are unreliable because they are based on year-end journal entries, which hide all detail necessary for a meaningful audit.

Second, Carus contends that New Phoenix's accounts contain unexplained expenses, including movement expenses, which do not appear to be related to Groupstars' or New Phoenix's sales. Given the lack of detail in the records of these companies, the commingling of accounts, and the fact that New

¹³Also, Carus notes that there are accounting irregularities with respect to fund transfers between New Phoenix and Groupstars.

Phoenix's expenses and bank withdrawals went unchecked during verification, Carus argues it is impossible to trace all of Groupstars' selling expenses.

Third, Carus contends that Groupstars did not make the books and records of other companies (which were located at the same address as Groupstars LLC but not disclosed to the Department prior to verification) available for the Department's inspection. Thus, Carus argues there is no basis to conclude that Groupstars did not use these other affiliated companies to hide subject merchandise selling expenses.

Carus also contends that irregularities surrounding Groupstars' U.S. banking activities cast doubt on the integrity of its U.S. records. According to Carus, Groupstars' primary provider of banking services is an affiliate of Groupstars', a fact that Groupstars has not disclosed. Carus alleges that this undisclosed affiliation is supported by record evidence indicating that Mr. Ji is an owner of the Business Bank of Baton Rouge, the principal bank of both Groupstars and New Phoenix. Carus further argues U.S. verification exhibits show that Groupstars failed to disclose bank accounts for Groupstars LLC, New Phoenix, and the accounts for other business entities with which Mr. Ji is involved.

Groupstars, however, contends that the U.S. Verification Report establishes the overall adequacy of its books and records, and that the Department only found discrepancies relating to inland freight and selling expenses. Specifically, Groupstars contends that the Department examined New Phoenix's records and addressed the inability to segregate Groupstars' and New Phoenix's selling expenses by basing Groupstars' indirect selling expenses on the expenses of both Groupstars and New Phoenix in the preliminary results. Groupstars also notes that the Department was able to verify both Groupstars' and New Phoenix's total selling expenses. Moreover, Groupstars asserts that during the POR, New Phoenix was essentially an inactive company, which remained open only to deal with an outstanding debt for its crawfish business. Additionally, Groupstars argues that the Department took the extraordinary step of examining Mr. Ji's personal income tax return and found no evidence of hidden selling expenses. With respect to Mr. Ji's relationship with the Business Bank of Baton Rouge, Groupstars, claims that Mr. Ji is one of over 100 investors in the bank and that this does not indicate that Mr. Ji controls the bank's operations. In addition, Groupstars claims that the Department found no evidence that it used affiliated U.S. companies to hide selling expenses. Groupstars further states that it is not unreasonable for Groupstars Holding and other U.S. affiliates to have no financial statements because these companies had no business activities during the POR.

E. Whether Groupstars is Affiliated with Its First U.S. Customer

Carus argues that the arm's length nature of Groupstars' transactions has not been established because Groupstars is affiliated with its customer, F2 Industries (F2). According to Carus, Groupstars has not disclosed the relationship between itself and F2 or the family that owns and operates F2, the Ferrells. As evidence of affiliation between Groupstars and F2, Carus notes that an individual involved in F2 borrowed an unspecified amount of money from New Phoenix, under unspecified terms for unknown

reasons. See, e.g., Certain Welded Stainless Steel Pipe from Taiwan: Final Results of Administrative Review, 62 FR 37543, 37549-50 (July 14, 1997); Mitsubishi Heavy Industries, Ltd. v. United States, 54 F. Supp. 2d 1183 (CIT) (1999). Carus contends that section 773(33)(G) of the Act and the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 870 (1994) support a finding of affiliation because of the loan discovered at verification. Carus notes that the Department has applied AFA in cases where parties have failed to disclose affiliations with allegedly independent customers. See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (Apr. 21, 2003) and accompanying Issues and Decision Memorandum at Comment 3.

In furtherance of its argument that Groupstars is affiliated with F2, Carus argues that Groupstars made payments to family members of individuals involved in F2 during the POR. Carus contends that statements made during the U.S. verification and documents presented to the Department suggest that Groupstars made false statements about its payments to, and business relationship with, certain individuals involved in F2. Carus notes that payments to a family member of someone involved in F2, are not plausibly explained by Groupstars' statements that they were made for that person's services as a sales agent of calcium hyperchlorite, which Groupstars has not reported to have sold, and sodium hexametaphosphate (sodium hex).

Carus further argues that Groupstars and F2 have a close buyer seller relationship because all of Groupstars' sales of potassium permanganate during this review and the prior review have been either to F2, or through one of the owners of F2 who was also involved in a failed joint venture with Mr. Ji, one of Groupstars' owners. Carus claims that this supports a finding of affiliation between Groupstars and F2 under the SAA. See SAA at 838. Additionally, Carus notes that a business relationship between Mr. Ji and one of the owners of F2 involving a past venture continues into the POR. Carus claims that this past business relationship, which extends into the POR, is a reason to suspect that prices between Groupstars and F2 were not negotiated at arm's length.

Carus also argues that F2 does not appear to be a legitimate company. Carus contends that the legitimacy of the company is suspect because a Dunn & Bradstreet report shows that the company has no listed owners, has an attorney as a registered agent, and lists minimal transactions (in the hundreds of dollars) during 2001. Carus also argues that copies of checks issued by F2, which show that F2 paid money to its customer, raise questions about the legitimacy of F2's commercial activities.

Groupstars, however, contends that the verification report establishes the arm's length relationship between Groupstars and F2. Groupstars argues that Mr. Ji and F2 are unrelated entities and that Mr. Ji neither owns nor controls F2. Groupstars further claims that an individual involved in F2 was not personally responsible during the POR for any of the debts from the failed venture, as Carus claims. Additionally, Groupstars argues that it adequately explained payments to the family member of an individual involved in F2 and that no unreported rebates to F2 occurred during the POR.

F. Whether Groupstars has Cooperated to the Best of Its Ability in This Review

Carus alleges that Groupstars has not acted to the best of its ability in providing the Department with accurate and truthful information, has abused the Department's certification rules,¹⁴ and must therefore receive total AFA. Carus argues that Groupstars has: 1) submitted to the Department certified but untrue statements about the source of certain proposed Indian factor values and price quotes; 2) failed to disclose a freight forwarding office and two leased warehouses; 3) submitted false statements about the length of production at the potassium permanganate facility and about the sales activities of its joint venture partner; 4) made false statements explaining an improvement in factor utilization; 5) falsely portrayed the extent of New Phoenix's business activity; and, 6) submitted a false translation of the job title of a trader involved with JCC's export sales. Arguing that Groupstars has violated the Department's certification rules, which ensure that the information submitted to the Department is complete and accurate,¹⁵ Carus argues that Groupstars failed to certify multiple statements, with the apparent intent of submitting questionable information on the record. Carus argues that the untrustworthiness of Groupstars' responses interferes with the Department's ability to determine margins on the basis of true, accurate, and complete information. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate from the People's Republic of China, 62 FR 61964, 61987 (November 20, 1997) and accompanying Issues and Decisions Memorandum at Comment 29 (CTL Plate from the PRC) (noting the Department's "overarching mandate to select the 'best' available data"); Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) (Certain Cased Pencils from the PRC) (noting the Department's obligation to review all data and then determine what constitutes best information).

Carus further argues that statements in this review about the 2000 new shipper review demonstrate Groupstars' lack of credibility. Specifically, Carus argues that a financial statement presented to the Department in the 2000 review that covers a portion of the instant POR does not reconcile with claims Groupstars has submitted in this review, and that statements made by Groupstars about production in the 2000 review were contradicted by information obtained at verification. Moreover, Carus argues that Groupstars made materially false statements even after it responded to the Department's request

¹⁴See section 351.303(g) of the Department's regulations.

¹⁵Carus argues that the Department's certification process provides a critical assurance of the completeness and accuracy of the factual information. Carus points out, "[t]he Department has noted that '[w]e assume that legal counsel, other representatives, and company officials are acting in good faith when they certify to the completeness and accuracy of a specific submission.' Antidumping Duties; Countervailing Duties, 62 FR 27296, 27338 (May 19, 1997). Additionally, parties and counsel that submit false certifications are subject to criminal liability. 18 U.S.C. section 1001."

that it admit to all false representations about the 2000 review. Carus further contends that the Department must consider Groupstars' misrepresentations in the 2000 review, when assessing its credibility in this instant review (e.g., Carus notes that Groupstars admitted it cooperated with JCC to manipulate the production information it submitted during the Department's 2000 new shipper review of the order. This manipulation included presenting false production and inter-company sales information to the Department). See Gourmet Equipment, No. 99-05-00262, 2000 Ct. Int'l Trade LEXIS 82 (July 6, 2000). In light of the foregoing, Carus believes that Groupstars must receive total AFA.

Groupstars, however, argues that it has made no untrue certifications in this review, and thus application of AFA is unwarranted. It argues that it received its Indian factor value quotes from a consultant, and that it did not alter the documents it received. Groupstars claims that the warehouse facilities, which it did not disclose to the Department, were operated by a logistical services company, not Groupstars. Additionally, Groupstars argues that the Joint Venture only had five months of production during the POR, and that JCC previously produced in the plant during the POR, and that it did not, therefore, make inaccurate statements about when production took place. Groupstars also argues that it submitted accurate FOP data for both JCC and Groupstars during the POR, and that these data have been verified by the Department. Groupstars further contends that New Phoenix was essentially inactive during the POR, only remaining open to resolve one outstanding debt issue relating to operations involving non-subject merchandise. Groupstars also argues that it did not submit a conflicting financial statement on the record of this review, but rather Carus submitted the statement, which Groupstars had submitted in a prior review. Finally, Groupstars argues that it submitted documents that clearly stated that JCC did business with an independent trader, and thus it did not file a false translation. Additionally, Groupstars argues that it did not violate certification requirements. It argues that all submissions made to the Department have been reviewed by both client and counsel and that it "stands behind" all submissions made during this review.

G. Whether Groupstars Should Receive the PRC-Wide Rate as Total AFA

Carus argues that for the reasons discussed above, Groupstars has established a pattern of deception that should result in its receiving the current PRC-wide rate as total AFA. Citing section 776(b) of the Act, Carus notes that the Department may select historical margins in a case as total AFA. Carus contends that there is ample authority that supports the application of total AFA in this case. Carus notes that the Department has an obligation to assure that antidumping duties are determined on the basis of true accurate and complete information. See CTL Plate from the PRC; Certain Cased Pencils from the PRC. Carus cites section 351.308 of the Department's regulations, and a number of cases, which it believes supports the application of total AFA in cases where the respondent does not provide

complete or reliable information.¹⁶

Carus argues that Groupstars' conduct in this review is at least as wrongful as the conduct of the respondents who received total AFA in Sugiyama Chain Co., Ltd. v. United States,¹⁷ Borden I and Borden II,¹⁸ Steel Authority of India,¹⁹ and Heveafil.²⁰ Moreover, Carus argues that failing to apply total AFA to Groupstars, which provided extensive false, misleading and unreliable information to the Department, would send a signal to future respondents that may attempt to manipulate the review process.

Groupstars argues that its responses have been verified and thus there is no basis for applying AFA. Moreover, Groupstars argues that the use of facts available is not warranted because it has fulfilled its obligations to provide information required under section 776(a)(2) of the Act. Groupstars also argues that under the Uruguay Round Agreements Act's high standard required for the application of an adverse inference, which, in principle, is incorporated in section 776(b) of the Act, the Department may not make an adverse inference unless it first determines that the party has "failed to cooperate to the best of its ability to comply with a request for information." Citing Article 6.8 of The Agreement on Implementation of Article VI of the Agreement on Tariffs and Trade 1994 (Antidumping Agreement) and Annex II, 5, Groupstars claims that the Department may not make an adverse inference against Groupstars because it has honestly supplied all the necessary information and has not impeded the final determination.

¹⁶Carus cites the following cases to support the application of total AFA: Steel Authority of India, Ltd., 149 F. Supp. 2d 921, 926 (CIT 2001) (Steel Authority of India); Borden I, 4 F. Supp. 2d 1221 (CIT 1998); Borden II, No. 96-08-01970 1998 Ct. Int'l Trade LEXIS 166 (December 16, 1998) *aff'd* 216 F.3d 1027 (Fed. Cir. 2000), rev'd on other grounds, 243 F.3d 1301 (Fed. Cir. 2001); Fujian, 178 F. Supp. 2d 1305 (CIT 2001).

¹⁷1995 U.S. App. Lexis 17075 (Fed. Cir. 1995) (where the Department concluded that the severity of the discrepancies and the respondent's lack of cooperation significantly impeded the review process and warranted the use of adverse facts).

¹⁸Borden I, 4 F. Supp. 2d 1221 (CIT 1998) and Borden II, No. 96-08-01970, 1998 Ct. Int'l Trade LEXIS 166 (December 16, 1998) (where the respondent was found to have engaged in a pattern of behavior such that the Department was justified in drawing an adverse inference).

¹⁹149 F. Supp. 2d at 926 (CIT 2001) (where the respondent's data contained such pervasive flaws that the Department concluded that the data submitted was wholly unreliable).

²⁰Heveafil SDN. BHD v. United States, No. 98-04-00908, 2001 Ct. Int'l Trade LEXIS 25 (February 27, 2001) (where the Department used AFA against one of the respondents because its records on cost of production and constructed value were either incomplete or could not be reconciled).

Groupstars also argues that the Department cannot meet the high standard for application of AFA required by the courts. Groupstars argues that the Department can only apply AFA after completing a reasoned inquiry. See Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366 (CIT 2000) (Nippon) (citing Borden I, 4 F. Supp. 2d 1221, 1247 (CIT 1998) and Mannesmannrohen-Werke AG v. United States, 77 F. Supp. 2d 1302, 1325 (CIT 1999) (Mannesman)). The Department may not, Groupstars notes, base an AFA decision on “mere suspicions or vague hints.” Nippon, 118 F. Supp. 2d at 1377-1378 (CIT 2000) (citing Mannesman, 77 F. Supp. 2d at 1313-14 (CIT 1999) quoting Borden I, 4 F. Supp. 2d at 1246-47 (CIT 1998)). Moreover, Groupstars asserts that the antidumping law may not be used as a punitive tool, but rather as a remedial measure, and that the Department must not stray from its statutorily imposed duty to determine dumping margins as accurately as possible.

The Department’s Position:

Upon further analysis of the accounting records provided to support Groupstars’ response, we find that these records cannot be relied upon. As discussed below, we have determined to base Groupstars’ dumping margin on total AFA for the final results of review.

First, in addition to the reporting failures identified under the “U.S. Sales Completeness” and “Factors of Production Data” sections below, the respondent has reported and certified inconsistent information as well as information that ultimately proved to be incorrect, establishing a pattern of providing incomplete, inaccurate, and, in some cases, unverifiable information.²¹ Specifically:

- Groupstars provided conflicting information as to when the Joint Venture, which operated the production facility during a portion of the POR, was formed.²²
- Groupstars provided inaccurate information regarding JCC’s operations after JCC transferred its potassium permanganate facility to the Joint Venture. Specifically, Groupstars initially reported that JCC was not involved in the distribution or sale of potassium permanganate after transferring the facility.²³ Later, Groupstars reported that JCC sold potassium permanganate

²¹Also, at verification, the Department obtained additional information regarding the relationship between Mr. Ji and one of the owners of F2. Groupstars reported that it is not affiliated with F2. Nevertheless, there is a considerable amount of information on the record regarding a long-term business relationship between Mr Ji and one of the owners of F2.

²²See Groupstars’ October 21, 2002 supplemental questionnaire response at 11-13.

²³See Groupstars’ September 12, 2002 supplemental questionnaire response at 1.

during the POR.²⁴

- Groupstars failed to identify one of its PRC sales offices despite two requests by the Department in supplemental questionnaires that it report all sales offices and production facilities.²⁵ The additional office was discovered by the Department at verification.²⁶
- Groupstars indicated that it had reported all of the bank accounts for the Joint Venture and for Groupstars-Jinan during the POR.²⁷ At verification we noted that Groupstars failed to report all of the Joint Venture's bank accounts.²⁸
- Groupstars initially reported that New Phoenix, a company solely owned by Mr. Ji, who is one of three shareholders of Groupstars Holding and the sole employee of Groupstars LLC, was not an active business and made no payments on Groupstars' behalf.²⁹ However, records submitted by Groupstars show that New Phoenix conducted business during the POR.³⁰ Furthermore, at verification the Department found evidence that some of Groupstars LLC's expenses appeared to have been paid out of New Phoenix's accounts. For other New Phoenix expenses, it was not clear from the records examined at verification whether the expenses related solely to New Phoenix's operations. Given the lack of accounting controls with respect to the classification of expenses, the Department found that Groupstars LLC's financial records could not be relied upon to calculate the company's indirect selling expenses. For the preliminary results of this review, as partial facts available, the Department calculated indirect selling expenses based on the total indirect selling expenses incurred by both Groupstars LLC and New Phoenix. See Calculations for the Preliminary Results of the Administrative Review of Potassium Permanganate from the PRC covering the period of review

²⁴See Groupstars' October 21, 2002 supplemental questionnaire response at 1.

²⁵See Groupstars' April 3, 2003 section A questionnaire response at 8; see also Groupstars' September 12, 2002 supplemental response at 7.

²⁶See PRC Verification Report at 3.

²⁷ See Groupstars' August 5, 2002 supplemental response at Appendix S1-A6 and Appendix S1-A9.

²⁸See Carus' January 23, 2003 submission to the Department at 13 (footnote 18) and PRC Verification Report at 7-8.

²⁹ See Groupstars' August 5, 2002 supplemental response at 9 and Groupstars' September 12, 2002 supplemental response at 17.

³⁰ See Groupstars' October 21, 2002 supplemental response at Appendix S3-3.

(POR), January 1, 2001, through December 31, 2001: Groupstars Chemical Co. Ltd., dated January 31, 2003.

- Groupstars, the respondent in the prior new shipper review, made false statements regarding that review in the instant review.³¹ During the course of the instant review, Groupstars admitted that it “submitted false information in the last review and did not cooperate to the best of their ability”.³² To clarify the record, in certified statements made in the instant review, Groupstars admitted that one of the two producers identified in the new shipper review actually did not produce potassium permanganate.³³ At verification in the instant review, Groupstars officials contradicted these certified statements regarding the identity of the producer in the new shipper review. Ultimately, Groupstars officials admitted that they had not told the truth at verification with respect to the identity of the producer of the merchandise shipped during the new shipper POR. Groupstars officials stated, and provided documentation indicating, that the merchandise in question was produced by a previously unidentified supplier.³⁴ Almost all of the source documents that the Department relied on during the instant review were generated at the same time that Groupstars was participating in the prior new shipper review. Furthermore, in the new shipper review, JCC provided Groupstars with FOP data and participated in the verification even though it had not supplied Groupstars with potassium permanganate during the new shipper POR.

The Department has considered these instances of reporting inconsistent and inaccurate information in examining whether the records presented in support of the respondent’s sales and factor of production information may be relied upon and in determining whether the respondent has cooperated to the best of its ability. For the reasons discussed below, we find that, in accordance with sections 776(a)(2)(D) and 776(b) of the Act, the use of AFA is appropriate for these final results of review.

³¹ On February 28, 2001, the Department initiated a new shipper review of Groupstars covering the period January 1, 2000 through December 31, 2000. See Potassium Permanganate From the People’s Republic of China: Initiation of Antidumping New Shipper Review, 66 FR 13895 (March 8, 2001). The Department rescinded the new shipper review because it determined that Groupstars had altered the original business license it had submitted to the Department, and therefore the Department could not determine if Groupstars qualified for a separate rate. See Potassium Permanganate from the People’s Republic of China: Rescission of Antidumping Duty New Shipper Review, 67 FR 38254 (June 3, 2002) citing Memorandum to Bernard Careau from Holly Kuga: Rescission of New Shipper Review (May 16, 2002). This memorandum is on the record of the instant review; see Carus’ June 11, 2002 submission.

³² See Groupstars’ October 3, 2002 letter to the Department at 1.

³³ See Groupstars’ October 21, 2002 submission to the Department at 10.

³⁴ See PRC Verification Report at 25.

U.S. Sales Completeness

Given the evidence that transactions relating to Groupstars LLC were at times recorded on the books of a separate company owned by Mr. Ji, prior to verification the Department sought to identify each U.S. company owned by Mr. Ji or operated out of Groupstars LLC's offices.³⁵ Groupstars identified New Phoenix and Waterman Chemical Company Ltd. (Waterman) as additional companies owned by Mr. Ji.³⁶ At verification, Mr. Ji confirmed that the companies reported in Groupstars' response were the only companies that he established in the United States.³⁷ However, the Department discovered at verification that Mr. Ji had failed to identify six U.S. companies domiciled at the same office as Groupstars LLC for which he was listed as the registered incorporator with the Office of Louisiana Secretary of State.³⁸ At verification, Mr. Ji acknowledged the existence of these companies but claimed that these companies were formed to engage in businesses unrelated to potassium permanganate. He also claimed that most of the companies were not active. See id. The Department was unable to verify either of these claims because, according to Mr. Ji, there were no income tax returns or financial statements for any of these companies. See id. The Department typically focuses its completeness test solely on the respondent's records. In this case, however, the evidence that transactions of the respondent company are recorded on the books of another business owned by Mr. Ji (i.e., Groupstars LLC's expenses were recorded in New Phoenix's accounts) required the Department to include in its completeness test an examination of whether these companies were involved with selling potassium permanganate. The Department was unable to establish the completeness of the reported sales because of Groupstars' inability to support its claim that none of these undisclosed companies were engaged in selling potassium permanganate.

Furthermore, with respect to Groupstars Holding, Groupstars' inability to provide a financial statement or tax return for Groupstars Holding, which holds all of Groupstars' interests, prevented the Department from establishing sales completeness. In the absence of any documentation to support

³⁵See the Department's August 23, 2002 supplemental questionnaire at 13 and Groupstars' response in its September 12, 2002 supplemental response. The Department asked, "Does Mr. Ji have any other businesses or are there any other businesses that share office space at the Jefferson Highway address? If so, please describe how payment for the office space is allocated between Mr. Ji's different companies." The only companies mentioned in the response as having an affiliation with Mr. Ji were Groupstars LLC, New Phoenix, and Waterman Chemical Company Ltd.

³⁶See Groupstars' September 12, 2002 supplemental questionnaire response at 16-17.

³⁷See U.S. Verification Report at 5.

³⁸See U.S. Verification Report at 5-7.

Groupstars' claim that Groupstars Holding had neither financial statements³⁹ nor tax returns,⁴⁰ the Department is not able to rely on Groupstars' assertion alone that Groupstars Holding had no activity. The lack of records for Groupstars Holding and the companies that Groupstars failed to disclose prevented the Department from verifying that Groupstars reported all of its U.S. sales.

Moreover, inconsistencies in Groupstars LLC's own financial records lead to questions as to whether it, or one of the undisclosed companies, made unreported sales of potassium permanganate during the POR. Specifically, a discrepancy among Groupstars' sales, cost of sales, and inventory records indicate that a significant percentage of Groupstars' sales may have not been reported. See memorandum to the file from Drew Jackson, Import Compliance Specialist, dated concurrently with this Issues and Decision Memorandum.

These questions, concerning the veracity and the completeness of the U.S. sales database, render the U.S. sales database unreliable and, consequently, unusable. In the absence of the assurance that a respondent has reported all U.S. sales of subject merchandise, the Department may not rely on that respondent's reported sales data. If the Department cannot verify the respondent's U.S. sales data, as is the case with Groupstars' data, it cannot calculate an accurate dumping margin.

Factors of Production Data

In addition to the gaps in the U.S. sales database, information supplied by Carus after verification raises significant questions regarding the integrity of the accounting records relied upon to verify the reported FOP data. This information consists of accounting records for JCC that were not provided to the verifiers and technical information which calls into question the reported consumption quantities for the FOPs.

As part of the test of JCC's reported total production quantities conducted at verification, the Department's verifiers examined the quantity of potassium permanganate sold by JCC to both domestic and foreign customers, and obtained copies of invoices for all of JCC's export sales of potassium permanganate during the POR.⁴¹ Prior to verification, as noted above, the Department notified Groupstars of deficiencies in its response regarding JCC's production and sales information and

³⁹See Groupstars' August 5, 2002 supplemental questionnaire response at 12.

⁴⁰See U.S. Verification Report at 3.

⁴¹See PRC Verification Report at Exhibit 29.

provided Groupstars with an opportunity to explain or remedy these deficiencies.⁴² However, at verification, the verifiers still noted discrepancies with respect to monthly sales totals and the destinations of export sales.⁴³ Moreover, after verification, Carus placed on the record two invoices for JCC's sales of potassium permanganate during the POR that had not been presented to the Department at verification.⁴⁴ These invoices were for two shipments of potassium permanganate sold by JCC to Carus during the POR for consumption in Mexico. The format of the invoices Carus provided appear substantially different from the invoices obtained at verification.⁴⁵ Groupstars states that an independent trader (and former employee of JCC) obtained JCC's invoices and used them to make the sales in question. Groupstars agrees that the invoices in question are JCC's invoices, and that the proceeds from these two sales were deposited into JCC's bank account.⁴⁶

The fact that alleged outside parties have access to JCC's invoices, and that these invoices were not provided to the Department at verification indicate a breakdown in JCC's basic accounting controls. Moreover, the significant differences between the export sales invoices provided by Carus and those invoices presented by Groupstars at verification raise questions as to the validity of the documentation for JCC's domestic and export sales of potassium permanganate that the Department relied upon at verification to test production quantities. The per-unit consumption quantities reported for the FOPs are based upon these production quantities. Because this is a non-market economy case, Groupstars has an affirmative responsibility to provide the Department with the necessary FOP information so that the Department may calculate a margin. Because the Department was unable to ascertain the veracity of JCC's sales invoices, the reported consumption quantities cannot be relied upon to calculate the FOPs for the Joint Venture facility during the POR.

The integrity of the accounting records relied upon to verify the FOP data is further called into question by the technical information placed on the record by Carus after verification. This technical information calls into question the consumption quantities that Groupstars reported for manganese dioxide ore, a significant input used to produce potassium permanganate.⁴⁷ Groupstars reported that its process for

⁴² See Groupstars' October 21, 2002 supplemental questionnaire response at 13 and Groupstars' November 22, 2002 supplemental questionnaire response at 3-4.

⁴³ See PRC Verification Report at 18.

⁴⁴ See Carus' January 23, 2003 submission to the Department at Appendices 7A and 7B.

⁴⁵ See PRC Verification Report, at Exhibit 29 and Carus' January 23, 2003 submission at Attachment 7A and 7B.

⁴⁶ See Groupstars' March 13, 2003 submission at 5.

⁴⁷ See Groupstars' April 10, 2002 at Appendix D-2.

producing potassium permanganate enabled it to obtain an amount of manganese dioxide from manganese dioxide ore which is almost equal to the ore's reported manganese dioxide content. According to Groupstars, it was able to accomplish this because it converts other manganese bearing chemicals in the ore into manganese dioxide.⁴⁸ Groupstars also reported that, during the production process, manganese ore and other reactants are heated to a temperature of 240 degrees Celsius (C).⁴⁹ At verification, the Department recorded temperatures of the reactants on two of Groupstars heating beds of 181 C and 192 C.⁵⁰ After verification, Carus submitted evidence, including a scientific treatise on inorganic and theoretical chemistry (which predates the POR), indicating that Groupstars could not obtain the claimed amount of manganese dioxide from manganese dioxide ore because the yield boosting side reactions claimed by Groupstars could occur at neither the reported nor verified temperatures. The treatise is entitled A Comprehensive Treatise on Inorganic and Theoretical Chemistry (Chemistry Treatise). The Chemistry Treatise indicates that temperatures over 500 C are required for such reactions.⁵¹ Groupstars does not contest the Chemistry Treatise regarding the required temperatures, but argues that the temperature readings taken at verification are inaccurate because they were observed after the thermometer had been removed from the reactant heating bed.⁵² Regardless of whether the thermometer readings viewed by the Department at verification are lower than the actual temperature of the reactants on the bed, Groupstars never reported that its reactant heating beds reach temperatures over 240 C, a temperature more than 260 C lower than that needed for the claimed reactions to occur.

The Chemistry Treatise discounts the veracity of Groupstars reported consumption quantities. Therefore, the Chemistry Treatise, taken together with the evidence indicating a lack of accounting controls at JCC, calls into question the veracity of the accounting records. It also calls into question the reported production quantities that the Department relied upon to verify the FOP information. Based on the above, we find that the records used to verify the reported sales and FOP information cannot be relied upon and are not verifiable. The Department cannot calculate an accurate margin for Groupstars

⁴⁸ See PRC Verification Report at 24-25 and Groupstars Beijing and Jianshui Verification Exhibit 15.

⁴⁹ See Groupstars' April 10, 2002 section D response at 1.

⁵⁰ See PRC Verification Report at 20.

⁵¹ See Carus' April 9, 2003 submission at Attachment 55, A Comprehensive Treatise on Inorganic and Theoretical Chemistry, J.W. Mellor, D.Sc., F.R.S., Volume XII, Longmans, Green and Co., 1932 at 436. This attachment notes that researchers found that two samples of rhodochrosite (manganese carbonate) commenced decomposition at 525 degrees and 510 degrees, respectively.

⁵² Specifically, Groupstars does not claim that manganese carbonate decomposition occurs at temperatures lower than those observed by the authors of the treatise submitted by Carus.

without verified FOP data because it is an indispensable component of the normal value calculation.

As discussed above, we find that the underlying accounting records that Groupstars provided to support its reported U.S. sales and FOP information are unreliable. Therefore, because Groupstars failed to provide the Department with verifiable information, we have determined that the application of total facts available is warranted. See section 776(a)(2)(D) of the Act.

Use of Adverse Inferences

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act further permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available where it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." The SAA establishes that the Department may employ an adverse inference to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See SAA at 870. The SAA also instructs the Department, in employing adverse inferences, to consider "the extent to which a party may benefit from its own lack of cooperation." Id. To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-53820 (October 16, 1997). Also, in determining whether a party has cooperated to the best of its ability, "Commerce must necessarily draw some inferences from a pattern of behavior." See Borden II, No. 96-08-01970, 1998 Ct. Int'l Trade LEXIS 166, (December 16, 1998). Additionally, the Department will conduct a fact-based assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing the Department with requested information. See Nippon Steel Corporation v. United States, 2003 U.S. App. LEXIS16316 (August 8, 2003).

As the Department has detailed above, during this administrative review, Groupstars has repeatedly provided inconsistent, inaccurate and incomplete data in reporting requested information to the Department. The number of instances where this has occurred demonstrates a pattern of behavior which supports the conclusion that Groupstars has failed to cooperate by not acting to the best of its ability. As described above, Groupstars reported inconsistent, inaccurate and incomplete information regarding: 1) production at the facility that produced the merchandise subject to this review; 2) the date of formation of the Joint Venture; 3) the activities of JCC after it transferred its production facilities to the Joint Venture; 4) its PRC sales offices; 5) the Joint Venture's bank accounts; 6) the activities of New Phoenix and U.S. companies established by Mr. Ji; 7) production during the 2000 new shipper review; 8) whether Groupstars maintained a U.S. inventory of subject merchandise; 9)

the export sales of JCC; and 10) its claimed efficiencies of a key material input.

In addition to the record evidence that demonstrates that Groupstars has established a pattern of reporting inconsistent, inaccurate, and incomplete information in this review, Groupstars also has failed to cooperate to the best of its ability because it failed to provide information it had readily available. Mr. Ji, the Groupstars official who certified to the accuracy of Groupstars' information, is the registered incorporator of the U.S. companies that were not reported to the Department. As set forth above, the Department requested that Groupstars report all businesses owned by Mr. Ji or at Groupstars LLC's offices.⁵³ In its response to the Department's request, Groupstars failed to identify a number of companies.⁵⁴ These unreported companies were only discovered at verification.⁵⁵ Additionally, record evidence shows that Mr. Ji knew of JCC's sales to Carus, yet invoices for these sales were not provided to the Department in any of Groupstars' supplemental responses or at verification.⁵⁶

The Department further finds that Groupstars may have benefitted from its failure to cooperate to the best of its ability in this review. Because the record contains gaps in information that affect both components of the dumping margin calculation (i.e., FOPs for normal value and U.S. sales information), Groupstars may have received a lower dumping margin on the basis of its reported information than it would have had it not withheld requested information. See SAA at 870.

This cumulative evidence justifies the finding that Groupstars failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act and, thus, an adverse inference is warranted.

Corroboration of Secondary Information

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. In this review, we are using, as AFA, the highest margin from this or any prior segment of the proceeding. Specifically, we are using 128.94 percent, the PRC-wide rate. See Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from the People's Republic of China, 56 FR 19640 (April 29, 1991) (1991 Final Results).

⁵³ See the Department's August 23, 2002 supplemental questionnaire at 13.

⁵⁴ See Groupstars' September 12, 2002 supplemental questionnaire response at 16-17.

⁵⁵ See U.S. Verification Report at 5 -7.

⁵⁶ See Groupstars' April 16, 2003 submission to the Department and Carus' June 11, 2002 submission in the new shipper review of Groupstars.

The rate we are using for AFA constitutes secondary information. See SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that "the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference." In addition, the SAA, at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

To corroborate secondary information, to the extent practicable the Department will examine the reliability and relevance of the information to be used. See Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearing Four Inches or Less in Outside Diameter and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1992). The PRC-wide rate was corroborated by the Department in a prior segment of this proceeding and nothing on the record of the instant review calls into question the reliability of the PRC-wide rate. See 1991 Final Results.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. The rate chosen is the current PRC-wide rate, which is the highest rate in use, and the rate currently applicable to Groupstars. Nothing in the record of this review calls into question the relevancy of the selected margin. Furthermore, the rate has not been judicially invalidated. Thus, we determine that it has probative value, and therefore, it is appropriate to use the PRC-wide rate as AFA.

Comment 2: Whether the Department Should “Collapse” Groupstars and JCC

Carus notes that under its regulations, the Department will treat two or more affiliated producers as a single entity, where 1) the producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, and 2) there is a significant potential for manipulation of price or production. Carus points out that the factors considered by the Department in finding a significant potential for manipulation of price or production include: the level of common ownership among the affiliates, directors or managers of one firm that sit on the board of directors of an affiliated firm, and whether operations of the affiliates are intertwined such as through coordination of production and pricing decisions, significant transactions between the affiliates, or the sharing of sales information, facilities or employees. Additionally, Carus notes that the Department has applied a modified version of its collapsing criteria in cases involving NME exporters. See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323 (CIT 2003).

Based on the above provisions, Carus contends that Groupstars and JCC⁵⁷ must be collapsed because they are affiliated parties pursuant to section 771(33) E and F of the Act and record evidence indicates that there is a significant potential for the manipulation of prices or production. According to Carus, this record evidence includes the following items: 1) JCC and the Joint Venture share common management; 2) JCC and the Joint Venture produced at the same facility during the POR (Carus contends that the transfer of control between these entities presents numerous opportunities for manipulation, particularly with respect to FOPs); 3) JCC exercises operational control over the Joint Venture (JCC owns a 48 percent interest in the Joint Venture); 4) JCC and the Joint Venture have intertwined production operations (JCC and the Joint Venture operate facilities at the same location and use some of the same inputs); 5) JCC and the Joint Venture have a close supplier relationship with respect to inputs (JCC supplied the Joint Venture with inputs) and outputs (the Joint Venture supplied JCC with all of the potassium permanganate that it sold after it transferred its potassium permanganate facilities to the Joint Venture); 6) through its control over the Joint Venture, and its own exports of potassium permanganate, JCC is able to influence the price of potassium permanganate in the U.S. market; and 7) JCC continues to represent itself as a producer of potassium permanganate and an exporter synonymous with Groupstars.

Moreover, Carus notes that Groupstars admitted it cooperated with JCC to manipulate the production information it submitted during the Department's prior new shipper review of the order. This manipulation included presenting false production and inter-company sales information to the Department. According to Carus, this act of collusion between Groupstars and JCC, that occurred during the time period which is the period of this review, is compelling evidence that these companies have a relationship that may readily lead to the manipulation of price or production information submitted in the instant review.

Therefore, Carus argues, the Department must collapse Groupstars and JCC and consider all of JCC's information in determining the collapsed entity's FOPs, sales completeness, and *de jure* and *de facto* absence of government control. Because JCC admitted that it is state-owned and the facts suggest that the PRC-government could have coordinated price or production with JCC, Carus argues that the collapsed entity, Groupstars/JCC, must receive the current PRC-wide margin.

Groupstars, however, contends that collapsing should not be an issue in this case because unlike other cases in which the Department collapsed two commonly owned production facilities, during the instant review only one facility produced the subject merchandise. See Sulfanilic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 13366 (March 13, 2000) and accompanying Issues and Decision Memorandum. (where the Department collapsed

⁵⁷ As noted above, during the POR, JCC transferred the facility that produced the subject merchandise to a joint venture between JCC and Groupstars LLC, one of the companies collectively referred to as Groupstars.

two entities because they were owned by the same joint venture partner) (Sulfanilic Acid). Moreover, Groupstars argues that there is no indication on the record that Groupstars and JCC manipulated the price of potassium permanganate. Groupstars contends that it sets the price of its U.S. sales of potassium permanganate separately from JCC and makes its own sales of potassium permanganate through its U.S. company, Groupstars LLC.

Additionally, Groupstars maintains that it should not be collapsed with JCC for FOP purposes because JCC, though related, is a separate legal entity from Groupstars, and the Department has taken the position that it will not use FOPs from a related production facility to calculate normal value. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China, 68 FR 13674 (March 14, 2003) (where the Department determined that it would not value the factors used to produce an upstream input supplied by a legally separate affiliated entity). Because JCC is a separate legal entity from the Joint Venture, and the products sold by Groupstars LLC during the POR were produced by the facility while it was owned by the Joint Venture, Groupstars contends that the Department should not use JCC's FOPs to calculate normal value.

With respect to separate rates, Groupstars argues that there is no evidence on the record that the PRC government is involved in the operations of either Groupstars or JCC. Furthermore, Groupstars claims that JCC's status as a "state-owned" company does not establish that it is controlled by the PRC government. See Silicon Carbide from the People's Republic of China, 59 FR 22585, 22568 (May 2, 1994) (ownership of a company by "all the people" in and of itself cannot be considered as dispositive in determining whether those companies can receive separate rates). Lastly, Groupstars, notes that only the entity that exports to the United States (in this case Groupstars Jinan) must establish its entitlement to a separate rate.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 3: Surrogate Value for Manganese Dioxide

Carus argues that the Department should value manganese dioxide using Indian import statistics for processed non-electrolytic manganese dioxide rather than raw manganese ore because processed manganese dioxide more closely matches the actual input used by Groupstars in the production of subject merchandise. Carus points out that the Department verified that Groupstars uses manganese ore that is ground to 120 mesh or 120 microns rather than raw manganese ore that is typically mined in large chunks which are unusable in the production of potassium permanganate. See PRC Verification

Report at 19. Further, Carus notes that the price of raw manganese ore does not accurately reflect the cost of processed manganese ore because it does not include the costs associated with processing raw manganese ore, including grinding and transportation.

Groupstars agrees with Carus that it uses processed (*i.e.*, ground) manganese dioxide ore, referred to as manganese dioxide ore powder, to produce potassium permanganate rather than manganese ore. Echoing Carus' comments, Groupstars notes that manganese ore consists of large chunks of ore that cannot be used to produce potassium permanganate. Moreover, Groupstars notes that certain types of manganese ore, such as manganese carbonate ore, may not even contain manganese dioxide. See Manganese Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001) and accompanying Issues and Decision Memorandum at Comment 2 (where the Department noted that manganese dioxide is a different type of ore from manganese carbonate). Therefore, Groupstars asserts that the Department cannot value manganese dioxide ore powder using Indian import statistics for raw manganese ore.

However, Groupstars urges the Department not to value manganese dioxide with Carus' proposed surrogate value. According to Groupstars, the Indian price quotes it placed on the record are superior to the Indian import statistics advocated by Carus because the quotes are for the same input, with nearly the same concentration, as that used by Groupstars. Groupstars points out that the Department has expressed a preference for using surrogate values as specific to the input (including purity levels) as possible. See Potassium Permanganate From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001) and accompanying Issues and Decision Memorandum at Comment 18 (1999 Potassium Permanganate Final Results) (where the Department found price quotes for the specific purity level of manganese dioxide used by respondents to be superior to values for manganese dioxide with unknown purity levels and composition even when the price quotes are for manganese dioxide containing certain other unknown elements); see also Manganese Metal from the People's Republic of China and accompanying Issues and Decision Memorandum at Comment 2 (where the Department found the physical and chemical characteristics of the ore important in selecting a surrogate value). Based on this preference, Groupstars maintains that the Indian import statistics advocated by Carus should be rejected because they do not identify purity levels nor are they for imports of manganese dioxide identical to that used by Groupstars.

On the other hand, Carus argues that the Department must reject Groupstars' Indian price quotes because: 1) many of the quotes were obtained from or through suppliers that are openly assisting Groupstars in undermining the U.S. antidumping duty order; 2) some of the quotes are for processed manganese dioxide with a purity level that does not exist in India; 3) the price quote from the company Manganese Ore (India) is for a size of product approximately 80 times larger than that used by Groupstars; and 4) several of the quotes are duplicates issued by essentially the same company and by

companies that are not processors of manganese dioxide. Moreover, Carus states that if the Department has concerns regarding purity, it can adjust the Indian import statistics for non-electrolytic manganese dioxide to reflect the purity of the input.

Groupstars admits that it erroneously included duplicate price quotes in its submissions to the Department but maintains that it submitted valid price quotes which constitute the best information available for valuing manganese dioxide because they are contemporaneous with the POR, obtained from companies in a surrogate country (India), and for the same type of ore (including concentration levels) used by Groupstars.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 4: Surrogate Value for Potassium Hydroxide

Carus asserts that the Department should value potassium hydroxide using Indian domestic prices for potassium hydroxide from six different months of the POR, as published in The Economic Times of India (Economic Times), instead of the Indian import prices for potassium hydroxide used in the preliminary results. After noting that the Department will exclude import prices from its surrogate value calculation where it determines that the prices are aberrational, Carus contends that the Indian import prices for potassium hydroxide appear to be aberrational (low) when compared to the Economic Times prices. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 33522 (June 22, 2001). Moreover, Carus argues that the Indian import prices for potassium hydroxide likely include prices for liquid potassium hydroxide, which are significantly lower than prices for potassium hydroxide flakes, the input used by Groupstars. Carus asserts that the other prices it submitted for potassium hydroxide, namely the January 2001 Chemical Weekly price quotes and a price quote for potassium hydroxide flakes, support and corroborate the Indian domestic prices of potassium hydroxide in the Economic Times. Additionally, Carus notes that in previous cases, the Department used domestic prices to value potassium hydroxide. See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (August 14, 2000), and accompanying Issues and Decision Memorandum at Comment 5.

Groupstars, however, asserts that the Department should continue to value potassium hydroxide (caustic potash) using the surrogate value derived from Indian import statistics. According to Groupstars, the Indian import prices that the Department used to value potassium hydroxide in the preliminary results are more appropriate surrogates than the domestic prices published in the Economic

Times because: 1) the Indian import prices are for the exact input used by Groupstars to produce the subject merchandise; and 2) unlike the domestic prices, which cover only six months of the POR, the import statistics include prices for the entire review period.⁵⁸ Moreover, Groupstars maintains that the Department favors using surrogate values covering broad market averages that cover the entire POR. See 1999 Potassium Permanganate Final Results at Comment 19.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 5: Surrogate Value for Slaked Lime/Lime/Limestone

Carus argues that the Department erroneously valued slaked lime, the input used by Groupstars to produce subject merchandise, using Indian import statistics for unground limestone. Though Groupstars reported that it processes limestone into slaked lime, Carus points out that Groupstars did not report a slaking step in its process descriptions or that it possessed the equipment or consumed the energy required for slaking. Therefore, as facts available, Carus urges the Department to determine that Groupstars purchased slaked lime, not limestone. If, however, the Department continues to use a value for limestone, Carus contends that it should use a value for ground limestone because there is no evidence that Groupstars grinds limestone and unground limestone is not usable in Groupstars' production process. Additionally, if the Department uses a value for limestone, Carus urges the Department to adjust the value to take into account the difference in the molecular weight of limestone and slaked lime.

Groupstars contends that the Department verified that it purchases limestone, not slaked lime, and slakes its own lime. Therefore, Groupstars asserts that the Department should continue to value limestone. With respect to the proper surrogate value for limestone, Groupstars notes that it submitted a price for limestone that corroborates the surrogate value used by the Department in the preliminary results.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

⁵⁸Groupstars urges the Department to assume that Carus did not submit domestic price information for the last six months of the POR because the prices for potassium hydroxide must have dropped.

Comment 6: Surrogate Value for Electricity and Water

Carus argues that the Department should rely on the surrogate values that it submitted to value electricity and water. Carus further argues that the electricity and water prices submitted are from municipal and state websites and are prices that Indian manufacturers actually pay for these inputs, and represent data from several different regions in India. Therefore, these values are the most appropriate prices to use to value Groupstars electricity and water.

Groupstars did not comment.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 7: Surrogate Value for Coal

Carus argues that the Department erroneously relied on a surrogate value for steam coal, and should instead have valued anthracite coal, the actual input used by Groupstars. Though Groupstars claims that it used steam coal in its production of subject merchandise, Carus asserts that there is evidence that Groupstars, in actuality, used anthracite coal in its production process. Carus notes that in the previous segment of this proceeding Groupstars repeatedly confirmed that it used anthracite coal in its production process. Carus further argues that the evidence⁵⁹ shows that Groupstars could not have produced potassium permanganate with the coal usages it has reported and suggests that Groupstars used coal with higher average British thermal unit (BTU) content than steam coal contains, and which is consistent with anthracite coal. Moreover, Carus asserts that Groupstars' claims of very high ore and potassium hydroxide utilization rates are inconsistent with the low-grade steam coal that Groupstars claims to use in production. Carus also argues that anthracite coal is widely mined in the PRC. Because the Department was not able to definitively determine the type of coal used by Groupstars,⁶⁰ and there is evidence indicating that Groupstars used anthracite coal, Carus argues that, the Department should value coal using a surrogate value for anthracite coal. If the Department should determine not to use anthracite coal as a surrogate value for Groupstars' coal factor, Carus contends that the Department should value coal using a surrogate value for a combination of steam and anthracite coal.

⁵⁹See Carus' April 9, 2003 submission at 44 (referencing Atts. 26 and 27) Technical Report cited in Carus Case Br. at 94-95.

⁶⁰See Memorandum to the File from Drew Jackson Re: Classification of Coal (undated).

Carus contends that valuing coal in this manner is consistent with the invoices for coal used by Groupstars.⁶¹

Groupstars, however, argues that the Department should continue to use steam coal to value steam coal, the actual input it used in production as stated in its section D response. Groupstars contends that the Department verified that the coal purchased by Groupstars met the specifications for steam coal and was used for the production of steam.⁶² Therefore, Groupstars asserts that the information on the record does not support Carus' allegation that the Department should use anthracite coal as a surrogate value.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 8: Surrogate Value for Salt

Groupstars argues that surrogate value for salt that the Department used in the preliminary results of this review is aberrational, and reflects a value for a type of salt not actually used by Groupstars in its production process. Groupstars argues that the Department should use the price of salt used in the preliminary determination of certain preserved mushrooms from the People's Republic of China. See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fourth New Shipper Review and Preliminary Results of Third Antidumping Duty Administrative Review, 68 FR 10694 (March 6, 2003) (Mushrooms from the PRC). Groupstars argues that the comparatively low surrogate value for salt used in Mushrooms from the PRC establishes that the surrogate value the Department used for salt is aberrational. Groupstars also argues that the Department's value for salt is aberrational because it is higher than that found for table salt in a grocery store.

Carus, however, argues that the Department should continue to use Indian import statistics to value salt. Carus notes that respondent's factor value submission contains no attachment related to salt. Additionally, Carus contends Groupstars' price quote appears to be derived from a financial statement, which Carus contends is a suspect source for surrogate values because they often reflect inventory values or represent the cost of self-producing the input. Additionally, Carus argues that the surrogate value that the Department used for salt is not aberrational because it does not seem unreasonably higher

⁶¹See Verification Exhibit 22 at page 37.

⁶²See PRC Verification Report at 31-32 and Verification Exhibit 28.

than the price of grocery store salt.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 9: Surrogate Value for Silicon Dioxide

Groupstars argues that the surrogate value the Department used in the preliminary results to value silicon dioxide is aberrational. Groupstars argues that the Department should instead use “an actual Indian price” that it submitted, which is for the exact type of input used by respondent. Moreover, Groupstars argues that the significantly lower price it submitted to the Department establishes that the Department’s surrogate value is aberrational.

Carus, however, argues that Groupstars has misrepresented its own price for silicon dioxide. Carus argues that Groupstars has misrepresented the unit value of the price quote it submitted to the Department, and that the correct value is substantially higher. Moreover, Carus encourages the Department to use the correct value of the quote submitted by Groupstars and suggests that the corrected value may actually establish that the surrogate value applied by the Department may be aberrationally low.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 10: Selection of Surrogate Financial Ratios

Carus argues that the Department should use its more contemporaneous 1999-2000 financial ratios from the Reserve Bank of India Bulletin that it placed on the record instead of the ratios from 1992-1993 that the Department used for the preliminary results. Carus argues that the Department has a preference for using the most contemporaneous data available and it has used these ratios in other cases. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China, 68 FR 7765 (February 18, 2003); see also 1999 Potassium Permanganate Final Results.

Groupstars did not comment.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1,

we have not addressed this argument. See SAA at 892.

Comment 11: Allegations of Ministerial Errors Related to the Calculation of Packing Materials

Carus argues that the Department inadvertently excluded the cost of transportation in its calculation for the cost of a drum for one of its sales observations. Carus states that the Department multiplied by the incorrect weight, and should correct this calculation for the final.

Carus additionally argues that ministerial errors were made in the calculation of woven and plastic bags by not properly including freight costs in the costs of these materials. According to Carus, the Department's program referenced the wrong cell numbers. Finally, Carus argues that the Department did not add the cost of pallets, an unreported packing material found at verification. Carus requests that the Department correct this error.

Groupstars did not comment.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Comment 12: Allegations of Ministerial Errors Related to the Calculation of Distance to the Port

Carus argues that the Department should calculate freight expense for material inputs based on the distance from Jianshui (the site of the potassium permanganate production facility) to Jinan (the site where potassium permanganate is transformed into free-flowing grade product), and from Jinan to the port of exit, rather than from Jinan to the port of exit alone. Carus states that the Department's practice is to cap the distance of any material input at the distance from the factory to the port of exportation. Carus cites Sigma Corp v. United States, 117 F.3d 1401 (Fed. Cir. 1997) (Sigma), as an example of the court upholding this practice. The Federal Circuit in Sigma held that the calculated freight costs for PRC-made materials may not exceed the calculated freight costs of shipping the material from the respondent's importing seaports in the PRC to their factories. Carus contends that because minimal production is done at Jinan, the freight components for the inputs used by Groupstars should be capped using the distance from Jianshui to its port of exportation via Jinan.

Groupstars did not comment on this issue.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1,

we have not addressed this argument. See SAA at 892.

Comment 13: Whether the Department Should Have Included in its Calculations Additional Indirect Selling and Movement Expenses

Carus contends that the Department should have used as facts available all of New Phoenix's disbursements in the calculation for Groupstars' indirect expenses because New Phoenix was unable to account to the Department how its expenses were related to its own business activities, and not to potassium permanganate. Carus argues that New Phoenix's expense records lack integrity. Additionally, Carus argues that Groupstars incurred some additional U.S. delivery expenses, including some trucking and warehouse costs. Carus alleges that these additional movement expenses on U.S. sales were not included in the calculation of constructed export price (CEP).

Carus contends that equity in Groupstars Holding received by Mr. Ji in lieu of a salary should be valued and allocated as an imputed selling expense. Carus notes that during the U.S. verification the Department found that Mr. Ji took no salary for his services to Groupstars during the POR, and instead received a 50 percent equity ownership in Groupstars Holding. Carus asserts that because the Department was unable to review Groupstars Holding's books, and that there were no salaries recorded in Groupstars LLC's accounts, it is difficult to discern the value of his services. United States Generally Accepted Accounting Principles (U.S. GAAP) requires that the value of stock received in exchange for services provided to an entity be expensed on the entity's income statement. Carus argues that including Mr. Ji's compensation is consistent with the Department's practice of imputing a salary for services provided by shareholders. See Final Determination of Sales at less Than Fair Value: Fresh Kiwifruit from New Zealand, 57 FR 13695 (April 17, 1992). Carus states that according to Groupstars the aggregate value of the stock is worth 2 million U.S. dollars, of which Mr. Ji owns over 50 percent, thus his share is valued at 1 million U.S. dollars. Since Mr. Ji has a three year service agreement with Groupstars this amount should be allocated over the three year term of Mr. Ji's service agreement to be consistent with U.S. GAAP.

Groupstars, however, asserts that the Department should not assign the cash disbursements for New Phoenix as indirect selling expenses because these disbursements are not related to selling activities. Groupstars contends that the Department verified that both New Phoenix's and Groupstars' financial statements were audited by an outside accountant. Groupstars further notes that the Department also verified the total expenses for both New Phoenix and Groupstars during the POR. Additionally, Groupstars asserts that the Department should not be assigning all disbursements as expenses, but only the expenses that clearly relate to potassium permanganate. Moreover, Groupstars argues that the Department verified the total expenses incurred by the Groupstars' and New Phoenix's separate audited financial statements which did not include these disbursements. Additionally, Groupstars, asserts that because the Department verified that New Phoenix made no sales of subject merchandise, the Department should not deduct movement expenses incurred by New Phoenix from Groupstars' sales price. See U.S. Verification Report at 11.

In response to Carus' assertion that Mr. Ji's equity interest in Groupstars should be treated as an expense, Groupstars contends that Mr. Ji is one of the owners of Groupstars, not an employee, thus he does not have a three year service agreement. Additionally, Groupstars argues that the Department has never in any past case expensed stock and allocated it as indirect selling expenses and should not do so in this case.

Department Position:

Because the Department has determined to apply total AFA to Groupstars as explained in Comment 1, we have not addressed this argument. See SAA at 892.

Agree _____ Disagree _____

Jeffrey May
Acting Assistant Secretary
for Import Administration

Date